

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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INGRIT ECHEVARRIA,

Plaintiff,

v.

INSIGHT MEDICAL, P.C., AL OKHRAVI,
and DR. STEVE OKHRAVI, individually,

Defendants.
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13 Civ. 3710 (KPF)

OPINION AND ORDER

KATHERINE POLK FAILLA, District Judge:

The Court is in receipt of Defendants' post-trial motions, including its motion for judgment as a matter of law in favor of Defendants. (Dkt. #65). Having reviewing the motions, and after *sua sponte* exercising its discretion to review the jury instructions, the Court finds it appropriate to allow the parties the opportunity to address certain issues identified herein. *See Hartline v. Gallo*, No. 03 Civ. 1974 (DRH), 2010 WL 3119786, at *7-9 (E.D.N.Y. Aug. 4, 2010) (permitting the parties opportunity to address whether omissions in jury instructions were error sufficient to grant a new trial where such omissions raised by court in *sua sponte* review); *see also Arnold v. County of Nassau*, 89 F. Supp. 2d 285, 297-98 (E.D.N.Y. 2000), *rev'd on other grounds*, 252 F.3d 599 (2d Cir. 2001) (same) (collecting cases).

Specifically, in the course of resolving these motions, the Court observed that neither party submitted a proposed jury instruction concerning the

numerosity element of Plaintiff's claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e to 2000e-17, nor did the parties object to the failure to include any discussion of that element in the jury instructions, even though the Supreme Court has found that "the threshold number of employees for application of Title VII is an element of a plaintiff's claim for relief, not a jurisdictional issue." *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 516 (2006). In light of these facts, the Court ORDERS that the parties submit supplemental letter briefing on or before October 20, 2014, on the following issues:

1. Whether the issue of numerosity was a question for the jury;
2. Whether the parties waived or forfeited any rights they might otherwise have had to jury consideration of the numerosity issue, either by not submitting proposed requests to charge on that issue or by failing to object to the absence of an instruction on that issue;
3. Whether, if the numerosity issue should have been submitted to the jury, the parties can now agree to have the Court decide the issue; and
4. Whether, if the numerosity issue should have been submitted to the jury, a new trial is warranted.

SO ORDERED.

Dated: October 6, 2014
New York, New York



KATHERINE POLK FAILLA
United States District Judge